UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOSEPH MINCEWICZ, Plaintiff,	:	
	:	PRISONER
v.	:	Case No. 3:00CV1433(CFD)
JUDGE PARKER, et al., Defendants.	:	

RULING AND ORDER

The plaintiff, currently confined at the Osborn Correctional Institution in Somers, Connecticut, brings this civil rights action pro se and in forma pauperis pursuant to 28 U.S.C. § 1915. He names as defendants Judges Parker, McMahon, Crawford, Tamborra and Turner of the Connecticut Superior Court. The plaintiff does not reference all of the defendants in his complaint. The Court assumes that the defendants presided over the pretrial proceedings and trial for charges resulting from the plaintiff's arrests on March 3, 1998, and March 13, 1998, at the Mohegan Sun Casino. The plaintiff alleges that "the defendants were all involved and or conspired in fundamental unfairness and miscarriage of justice which burdened him harm, an unreliable conviction. The defendants knew that the plaintiff was declared mentally disabled, took advantage of the situation, charged, convicted and sentenced him without due process or respect for the law." He also alleges that the defendants treated him differently from other disabled individuals, thereby violating his right to equal protection of the laws. The plaintiff seeks an award of damages.

On January 4, 2001, the Court informed the plaintiff that from the allegations in the complaint, it appeared that the defendants were protected by judicial immunity and instructed him

to file an amended complaint or otherwise notify the court why the defendants are not immune from suit. On January 25, 2001, the plaintiff filed a notice. He does not provide any additional facts. Rather he states that he was "forced" to defend himself at trial because the defendants permitted the state's attorneys and public defenders to "disregard" his defense. He concludes that the conduct of the defendants went beyond the scope of their authority. The plaintiff also argues that he brings this action pursuant to the Americans with Disabilities Act. For the reasons that follow, the case is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and (iii).

The plaintiff has met the requirements of 28 U.S.C. § 1915(a) and has been granted leave to proceed in forma pauperis in this action. When the court grants in forma pauperis status, section 1915 requires the court to conduct an initial screening of the complaint to ensure that the case goes forward only if it meets certain requirements. "[T]he court shall dismiss the case at any time if the court determines that . . . the action . . . is frivolous or malicious; . . . fails to state a claim on which relief may be granted; or . . . seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B)(I)-(iii).

The court construes pro se complaints liberally. See Haines v. Kerner, 404 U.S. 519, 520 (1972). Thus, "when an in forma pauperis plaintiff raises a cognizable claim, his complaint may not be dismissed sua sponte for frivolousness under section 1915(e)(2)(B)(I) even if the complaint fails to 'flesh out all the required details.'" Livingston v. Adirondack Beverage Co., 141 F.3d 424, 437 (2d Cir. 1998) (quoting Benitez v. Wolff, 907 F.2d 1293, 1295) (2d Cir. 1990)). The court exercises caution in dismissing a case under section 1915(e) because a claim that the court perceives as likely to be unsuccessful is not necessarily frivolous. See Neitzke v. Williams, 490 U.S. 319, 329 (1989).

In order to state a claim for relief under section 1983 of the Civil Rights Act, the plaintiff must satisfy a two-part test. First, the plaintiff must allege facts demonstrating that the defendant acted under color of state law. Second, he must allege facts demonstrating that he has been deprived of a constitutionally or federally protected right. Lugar v. Edmondson Oil Co. , 457 U.S. 922, 930 (1982); Washington v. James, 782 F.2d 1134, 1138 (2d Cir. 1986).

All of the defendants in this case are state court judges who are protected from suit for damages by judicial immunity. "[J]udicial immunity is an immunity from suit, not just from ultimate assessment of damages." Mireles v. Waco, 502 U.S. 9, 11 (1991). "The absolute immunity of a judge applies '"however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff."'" Young v. Selsky, 41 F.3d 47, 51 (2d Cir. 1994) (quoting Cleavinger v. Saxner, 474 U.S. 193, 199-200 (1985) (quoting Bradley v. Fisher, 13 Wall. 335, 347 (1872))). Judicial immunity is overcome in only two situations. "First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." Mireles, 502 U.S. at 11 (citations omitted).

The only specific allegation directed at the defendants is that after Judge McMahon granted the plaintiff's motion to replace his public defender with a special public defender, "the court" never resolved the issue of whether a public defender who subsequently represented him properly assisted him in obtaining a psychiatric evaluation. The plaintiff also alleges that he was "coerced" into proceeding pro se at his criminal trial.

The plaintiff has not provided any facts suggesting that the defendants were not acting in their judicial capacities. "Acts are judicial in nature if they are (1) normal judicial functions (2)

that occurred in the judge's court or chambers and were (3) centered around a case pending before a judge." Badillo-Santiago v. Andreu-Garcia, 70 F. Supp. 2d 84, 91 (D.P.R. 1999). Even if the action is determined to be erroneous or malicious, the judge is not stripped of immunity. See Stump v. Sparkman, 435 U.S. 349, 356-57 (1978).

Because the plaintiff has alleged only actions taken in the defendants' respective judicial capacities, the defendants are protected from a section 1983 action for damages by absolute judicial immunity. Accordingly, all claims pursuant to section 1983 are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii).

The plaintiff also brings this action pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. ("ADA"). Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

The defendants in this case are all state employees. As such, a suit against them in their official capacities is a suit against the state. See Kentucky v. Graham, 473 U.S. 159, 165-66 (1985). However, the Supreme Court recently ruled that an individual could not sue a state for money damages in federal court under the ADA because that statute did not properly abrogate the immunity to which states are entitled under the Eleventh Amendment. See Board of Trustees of Univ. of Alabama v. Garrett, -- S. Ct.--, 2001 WL 173556, No. 99-1240, *11 and n.9 (U.S. Feb. 21, 2001) (reaching this conclusion in the context of a suit by a state employee). Thus, the defendants named in this suit are immune from the plaintiff's ADA claim, which seeks money damages. Therefore, the Court dismisses the plaintiff's ADA claim against the defendants in their

official capacities pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

With regard to the ADA claims against the defendants in their individual capacities, the court notes that "the weight of judicial authority supports the conclusion that individual defendants cannot be held liable for violations of Title II of the ADA." Berthelot v. Stadler, No. CV-99-2009, 2000 WL 1568224, at *2 (E.D. La. Oct. 19, 2000) (citing Alsbrook v. City of Maumelle, 184 F.3d 999, 1005, 1005 n.8 (8th Cir. 1999); Lewis v. New Mexico Dep't of Health, 94 F. Supp. 2d 1217, 1230 (D.N.M. 2000); Calloway v. Glassboro Dep't of Police, 89 F. Supp. 2d 543, 557 (D.N.J. 2000); Yesky v. Pennsylvania Dep't of Corrections, 76 F. Supp. 2d 572, 575 (M.D. Pa. 1999)); see also Nucifora v. Bridgeport Bd. of Educ., No. 3:99cv79, 2000 WL 887650, at *2 (D. Conn. May 23, 2000); Shariff v. Artuz, No. 99CV0321(DC), 2000 WL 1219381, at *5 (S.D.N.Y. Aug. 28, 2000); Badillo-Santiago, 70 F. Supp. 2d at 89. Accordingly, the ADA claims against the defendants in their individual capacities are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

The complaint is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and (iii).

SO ORDERED this 26th day of February, 2001, at Hartford, Connecticut.

/s/
Christopher F. Droney
United States District Judge